

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(1) **CRA-D-695-DB of 2010**
Date of decision:-5.4.2017
Saurabh and another
...Appellants

Versus

State of Haryana
...Respondent

(2) **CRA-S-1466-SB of 2010**
Amal @ Manke
...Appellant

Versus

State of Haryana
...Respondent

(3) **CRA-S-1495-SB of 2010**
Ms.Radha Devi
...Appellant

Versus

State of Haryana
...Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr. Bijender Dhankar, Advocate
for the appellants in CRA-D-695-DB of 2010 and
CRA-S-1495-SB of 2010.

Mr.Rajesh Lamba, Advocate
for the appellant in CRA-S-1466-SB of 2010.

Mr.Ashok S. Chaudhary, Additional A.G., Haryana.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of three appeals

i.e. **CRA-D-695-DB of 2010** filed by Saurabh and Akhand Partap,

CRA-S-1466-SB of 2010 filed by Amal @ Manke and **CRA-S-1495-SB of 2010** filed by Ms.Radha Devi, all four of them being accused ,who were tried by the Court of learned Sessions Judge, Faridabad and were convicted and sentenced as under:

Name of accused	Under Section	Sentence Awarded
Saurabh	364-A IPC	Rigorous imprisonment for life and to pay a fine of Rs.30,000/- and in default thereof, to further undergo rigorous imprisonment for a period of one year.
-do-	376 IPC	Rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default thereof, to further undergo rigorous imprisonment for a period of ten months.
Akhand Partap	364-A IPC	Rigorous imprisonment for life and to pay a fine of Rs.30,000/- and in default thereof, to further undergo rigorous imprisonment for a period of one year.
Radha Devi and Amal @ Manke	216 IPC	Rigorous imprisonment for three years and to pay a fine of Rs.3,000/- each and in default thereof, to further undergo rigorous imprisonment for a period of three months.

The substantive sentences awarded to convict Saurabh were ordered to run concurrently.

Briefly stated, the prosecution story as it came out during the trial, is that complainant – Arun Pal Singh son of Jadunath Singh, resident of House No.B-503, Sainik Colony, Faridabad submitted a

written application dated 27.1.2009 at Police Station SGM Nagar, Faridabad seeking release of his daughter (referred to as the prosecutrix/victim to conceal her identity) from the clutches of accused Saurabh, resident of House No.472, Sainik Colony, Opposite Roadways Bus Stand, Etah, U.P. *Inter alia*, in the application, the complainant had contended that his daughter, i.e. the victim, aged about 22 years was a student of MBA Ist year; that on 26.1.2009, at about 9:00 in the morning, the victim had gone to Shiv Mandir, Sainik Colony for worship as per her daily routine but she did not return home; that son of complainant inquired from their relations but without getting any clue; that at about 12:15 noon his son informed him telephonically that he was at his native village Sarjanpur, P.O. Bhogaon, District Mainpuri, as such he returned home reaching there at 8:00 p.m.; that they searched for the victim at several places but without any success. Further, in the application, the complainant contended that his elder daughter Sonia residing at House No.A/1304, Dabua Colony along with her husband Saurabh (accused), on being inquired informed that on 26.1.2009 at about 3:30 p.m., she had received a telephonic call from her husband Saurabh that he had taken away her sister, the victim, to Delhi and if she wanted her sister to return home in a safe condition then she should ask her brother and father to pay Rs.10 lacs else she (the victim) would be done to death and he would do anything with her, which she had never thought of. According to the complainant, he was waiting for another call from Saurabh but no such call was received and when he tried to contact him on his mobile phone, it was found to be switched off. As

such, he approached the police to lodge a report and to get his daughter, the victim, freed from the custody of Saurabh.

On receipt of said complaint, formal FIR Ex.PM was registered at Police Station SGM Nagar, Faridabad by SI Vijay Kumar for offences under Sections 364-A/376/216/120-B IPC. Thereafter, on 27.1.2009, police party led by SI Vijay Kumar (hereinafter referred to as the Investigating Officer/IO) went to the spot and recorded statements of Sonia Devi and Krishan Partap Singh. Efforts were made to trace out the prosecutrix but without any success. The Investigating Officer collected call details of the mobile phone of Saurabh in terms of which location of Saurabh was at Etah. On 28.1.2009, a police party headed by ASI Balwant Singh along with complainant Arun Pal Singh and his son Satender went to Etah and searched for the prosecutrix but she could not be located. On 29.1.2009, the prosecutrix was produced before ASI Balwant Singh by SI Neeraj Kumar, Pathak of U.P. Police. A memo of recovery of prosecutrix Ex.PC was prepared. ASI Balwant Singh produced the prosecutrix before the SHO on 30.1.2009. He had prepared rough site-plan of the place of recovery of prosecutrix as Ex.PD. On 30.1.2009, prosecutrix was got medico-legally examined from B.K. Hospital, Faridabad. The lady Medical Officer after medical examination handed over a glass vial containing swab, sample seal which were taken into possession vide recovery memo Ex.PE. On 18.3.2009 on receipt of information that accused Saurabh had surrendered in the Court, SI Ram Kumar went to the Court complex, Faridabad and moved an application Ex.PK seeking permission of the

Court to join Saurabh in the investigation which was accordingly granted to him. Accused Saurabh was formally arrested in this case. Such accused was interrogated during the course of which, he suffered a disclosure statement Ex.PL. Thereafter, accused was remanded to police custody and on 18.3.2009 he was medically examined. On 20.3.2009, accused was taken to Etah. Accused Radha Devi and Amal @ Manik Pandey were arrested in this case and were brought to Faridabad. Accused Manik Pandey suffered a disclosure statement Ex.PF on 20.3.2009. Such accused was produced in the Court of Illaqa Magistrate on 21.3.2009 and he was remanded to police custody. Thereafter, the police party took him to Etah to effect the recovery of the car. The car was not recovered on that day. However, on the same day, accused Radha Devi was produced before the Magistrate and she was sent to judicial custody. On 24.3.2009, Hari Parkash Pandey, father of accused Manik Pandey produced Car No.UP-82-K-2595 along with its registration certificate (Ex.PG/1) before the police and those were taken into possession vide recovery memo Ex.PG. On 6.4.2009, accused Akhand Partap, brother of accused Saurabh was arrested in this case. He was interrogated, during the course of which, he suffered disclosure statement Ex.PH that his elder brother Saurabh had come to Tikona Park along with his sister-in-law, the victim, and he along with his brother and the victim sat at a tea stall, where he administered sleeping pills mixed in the tea to the victim and after consuming that she became unconscious and was taken to Etah by bus and thereafter he arranged a car make Indigo bearing registration No.UP-82-K-2595 which was

driven by Amal @ Manke. The prosecutrix was taken to various places in that car. During the course of investigation, the Investigating Officer recorded statements of various witnesses and after completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Chief Judicial Magistrate, Faridabad.

On presentation of challan in the Court of Chief Judicial Magistrate, Faridabad, he supplied copies of documents relied upon in the challan to all the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offences under Sections 364-A/366/376(2)(g) IPC are exclusively triable by the Court of Sessions, learned Chief Judicial Magistrate, Faridabad vide his order dated 17.7.2009 committed the case to the Court of learned Sessions Judge, Faridabad.

When the case was received in the Court of learned Sessions Judge, Faridabad, finding that prima facie charge was disclosed against the accused, accused Akhand Partap and Saurabh were charge-sheeted for the offences punishable under Sections 364-A read with Section 120-B IPC, Saurabh for the offence under Section 376 IPC and Amal @ Manke and Radha Devi for the offence under Section 216 IPC. The accused pleaded not guilty and claimed trial. The case was then fixed for evidence of the prosecution.

During the course of its evidence, the prosecution examined as many as 13 witnesses as per details below:

PW1 prosecutrix deposed as per the prosecution story.

PW2 Arun Pal Singh – complainant supported the case of prosecution on material aspects so did PW3 Sonia, sister of the

prosecutrix and daughter of complainant.

PW4 Constable Phool Kumar from Police Station SGM Nagar, Faridabad stated that on 27.1.2009, he was deputed by MHC to deliver the special reports of this case and he accordingly delivered the same to the Illaqa Magistrate and higher police officials.

PW5 ASI Balwant Singh, who had carried out the investigation of this case on 28.1.2009 and 30.1.2009 and was associated with it on 20.3.2009 and 6.4.2009 deposed regarding his part.

PW6 Lady Constable Sushila deposed that on 30.1.2009, she remained associated with SI Vijay Singh, Investigating Officer of this case; that on that day, the prosecutrix was got medico-legally examined at B.K. Hospital, Faridabad and the lady doctor after medical examination handed over parcels which were taken into possession vide recovery memo Ex.PE attested by her. The witness stated that thereafter prosecutrix was brought to Court for her statement before the learned Magistrate.

PW7 Sanjeev Lakra, Nodal Officer, Reliance Communication Ltd., New Delhi had brought the summoned record pertaining to mobile No.93108 65523 issued in the name of Saurabh Chauhan resident of H.No.A – 1304, Dabua Colony, Faridabad. He stated that he had brought the call details Ex.PF consisting of 1 to 13 pages for the time period 20.1.2009 to 25.1.2009 pertaining to incoming and outgoing calls of the said mobile phone. He stated that in such call details, Based Terminal Station (BTS) have also been mentioned. PW7 Sanjeev Lakra was recalled for further examination when he had

brought the summoned record pertaining to mobile No.93108 65523 dated 26.1.2009 proving true copy of call details dated 26.1.2009 (seven pages) as Ex.PF/1.

PW8 Constable Ashok Kumar, Draughtsman deposed that on 10.4.2009, he prepared scaled site-plan Ex.PI, on the demarcation of prosecutrix, on direction of SI Ram Kumar which is correct as per spot.

PW9 Lady Dr. Rajni Chauhan, Medical Officer, B.K. Hospital, Faridabad tendered in evidence her affidavit Ex.PJ stating that the same be read as a part of her examination. She proved true carbon copy of MLR as Ex.PJ/1 and police request as Ex.PJ/2. The contents of the affidavit Ex.PJ are as under:

“That while posted as Medical Officer in B.K. Hospital, Faridabad and on 30.1.2009, on the request of police medico legally examined Archana daughter of Arun Pal Singh, 22 years female, resident of H. No.B-503, Sainik Colony, Sector – 49, SGM, Faridabad with history of sexual assault by her JIJA on 26.1.2009 to 29.1.2009. Patient was brought by L.C. Sushila Devi, No.2751, P.S. NIT, Faridabad.

On general examination, she was conscious, well oriented, her vitals were stable. Pulse 86/mt., CVS/RS-NAD, BP was 110/70, M/H regular 4/28, 30d. Her menarche was 7 years back. Her LMP was 08.01.2009. She was average built and average nourished girl. Her secondary sex characters were well developed. There was

no external mark of injury found all over the body.

On local examination no bleeding, no tear, hymen torn with irregular healed margins, vagina admits two fingers easily. Vaginal swabs taken, sent for FSL.

OPINION:-*In her opinion the possibility of sexual intercourse could not be ruled out.*

That after medical examination, she handed over to police:

- 1. Copy of MLR.*
- 2. Sample Seal used.*
- 3. Sealed Vial containing two vaginal swabs.*
- 4. Sealed packet containing forwarding letter, copy of MLR and sample seal used.*

That all the injuries shown to her (the doctor) by the injured have been mentioned by her in the MLR.

PW10 SI Ram Kumar from Police Station Mujessar stated that on 18.3.2009, he was posted at Police Station SGM Nagar, Faridabad. He deposed regarding what was done by him during the investigation of this case and his filing the challan in the Court when it was finalized.

PW11 Manju Lata Pandey wife of Harinder Prasad Pandey, aged 42 years, Teacher, resident of Etah (U.P.) stated that she is a registered owner of car make TATA Indigo bearing registration No.UP-82-K-2595 which was taken on *superdari* by her from the Court of learned Chief Judicial Magistrate on 25.3.2009. She added that the car was at her home at Etah and it was produced by her husband at Police

Station SGM, Nagar, Faridabad.

PW12 SI Vijay Kumar, who had investigated the case initially deposed in that regard.

PW13 MHC Rajesh Kumar, a formal witness tendered in evidence his affidavit Ex.PO submitting that the same be read as a part of his examination. He had also brought the summoned record pertaining to daily diary No.6 dated 28.1.2009 and 13 dated 30.1.2009 proving correct copies thereof as Ex.PP and Ex.PP/1.

With that the prosecution evidence stood closed.

Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

Further, accused Saurabh took up a plea that the relations between him and his family and his in-laws were running strained, however, a compromise was effected by his father and as per the conditions put by his father-in-law; that he started living with his wife Sonia at the house of his in-laws in Dabua Colony; that after little while again his father-in-law started demanding from his father that he should sell his properties at his native village and should give his share to buy a house in the name of Sonia at Faridabad so that Sonia can be settled down at Faridabad and his father had refused to accept this demand; that due to this, the relations further strained; that he had never kidnapped the victim nor he had committed rape upon her but present case is

outcome of the pre-planned conspiracy of his father-in-law to bow down his entire family to accede to his demands. However, when he was staying with his wife Sonia at Dabua Colony then the victim used to visit quite often and realized that she was having a one sided affair with him and he tried to make her see reason but she was adamant and kept pressuring him to leave his wife Sonia in order to marry her; that because of this behaviour of the victim, he had left for his native village on 26.1.2009 but even there, she kept following him and reached there by train on her own on the next day i.e. on 27.1.2009. However, his father told her in clear terms to leave Etah at once and she should not come to their place again and that later on, they came to know that the victim and her parents have lodged this false case against him and his family.

Further, accused Akhand Partap took up a plea that he has got no concern with this case, however, he came to know that on 26.1.2009 his brother Saurabh had come to Etah and on 27.1.2009 Archana reached there by train and his father clearly told her not to come to their house and instructed her to leave Etah at once; that later on, he came to know that this case has been lodged by family of the victim as they wanted his father to sell their family properties and give the share of Saurabh to Sonia to buy home at Faridabad.

Further, accused Radha Devi also took up almost a similar plea as taken by accused Akhand Partap. In addition to that she further pleaded that at no point of time, she intentionally gave refuge to Saurabh, the victim or Akhand Partap while knowing that they were

wanted by police. However, she never knew that any case was pending against Saurabh and Akhand Partap.

Further, accused Amal alias Manke took up a plea that he does not know driving car or four wheelers nor he possessed any driving licence; that he never had any relations with Saurabh, Akhand Partap or any of their family members; that he never knew Saurabh and Akhand Partap before he was arrested in this case; that his father owned a car bearing registration No.UP-82-K-2595 but the same is used for taking his mother to and from school and even on dated 26.1.2009 to 29.1.2009, the same car was used by his mother who is a Government teacher for going to school and returning back and that he has never used the car to carry Saurabh, Akhand Partap and Archana and he does not know them.

During their defence, Akhand Partap Singh accused appeared as DW1 and stated that a criminal case No.236 of 2008 was registered in Police Station Kotwali Nagar, Bhogaon, District Etah, under Sections 498-A, 504 and 506 IPC in which Arun Pal Singh son of Jadunath Singh, resident of Sarjanpur, Police Station Bhogaon, District Mainpuri was complainant; that the said case was registered against Devender Singh Chauhan, Smt. Radha Devi, Smt. Renu Devi, Sudhir Chauhan, Akhand Partap (this witness), Priti Chauhan, Bhartiya Chauhan, Smt.Rajni Devi, Harender Kumar Raghav etc. He added that in the above case, the police has filed cancellation report on 5.9.2008 in the Court of Chief Judicial Magistrate, Etah (Copy Ex.DA) and that the accused arrayed in the case aforesaid were found to be innocent.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved and they have filed the present appeals praying that the same be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

We have heard learned counsel for the appellants-accused-convicts and learned Additional Advocate General for the State of Haryana besides going through the record and we are of the considered view that the impugned judgment is not sustainable since it suffers from various illegalities and infirmities.

First of all taking charge under Section 364-A IPC against accused Saurabh and Akhand Partap i.e. offence of kidnapping for ransom, in this case, kidnapping of prosecutrix is not established much less the same being for the purpose of ransom. It has to be kept in mind that at the relevant time, the prosecutrix was aged about 22 years and a student of MBA Part I, in that way an educated young woman. It is not the case of prosecution that she had been taken away by accused Saurabh and his brother Akhand Partap by use of force, rather the version of prosecution is that she had been taken away by misrepresentation of facts first and thereafter by making her unconscious. It has to be taken note of that the parties were known to each other, accused Saurabh being real brother-in-law of the prosecutrix and accused Akhand Partap being his younger brother. As the prosecution story goes, though denied by prosecutrix appearing as PW1

nevertheless established on the file, that prosecutrix had made a supplementary statement Ex.DA dated 1.4.2009 before the Investigating Officer which was in continuation of her earlier statement wherein she had stated that on 30.1.2009, she was in panic; that statements recorded by the Police Officer and the Magistrate were not so done correctly as she was in panic; that her brother-in-law Saurabh had come to her house No.B-503, Sainik Colony, Faridabad in the evening of 25.1.2009 and at that time, no one was present at home except she and her *bhabhi*; that her brother-in-law had forcibly committed rape upon her in a room under threat and due to shame, she could not tell the same at home; that on 26.1.2009 she had gone to temple where her brother-in-law met her and he had falsely told her regarding illness of her sister and then she started going to Dabua, then on the way his (Saurabh) younger brother Akhand Partap met her who had given her some intoxicant in the tea, due to which she became unconscious and then she was taken to Etah, U.P.; that there her brother-in-law Saurabh forcefully committed rape twice upon her; that thereafter took her to Kashganj where also she was raped and that she was given threat that if it was told to anyone, she would be killed and out of that fear she did not tell. When the prosecutrix got her statement recorded during the trial as PW1, she did not make any mention of incident dated 25.1.2009 so narrated by her in her supplementary statement, rather when she was asked about that in her cross-examination, she stated that she did not make any statement to the police that Saurabh had committed rape upon her on 25.1.2009. She was duly confronted with statement Ex.DA wherein it was found to be

so recorded. PW10 SI Ram Kumar, who had carried out the investigation in this case to a considerable extent, in his cross-examination stated that on 1.4.2009, he had recorded supplementary statement of the prosecutrix in her house in the presence of her parents. Therefore, it comes out that the prosecutrix had made such statement but for the reasons best known to her she resiled from the same. If we go by as to what the prosecutrix had stated in her supplementary statement Ex.DA wherein, she had alleged that she had been raped by her brother-in-law Saurabh in her residential house where only she and her *bhabhi* were present, these contentions do not seem to be convincing. A young educated woman getting a sexual assault at the hands of her brother-in-law in such a manner does not appeal to reason. She could have raised hue and cry attracting the attention of her sister-in-law and persons residing in the neighbourhood rather than submitting herself meekly to the accused. It is highly unlikely that Saurabh would have subjected the prosecutrix to rape in her house when her *bhabhi* was around. This could be possible if the prosecutrix was a consenting party and not otherwise. Furthermore, the prosecutrix as alleged by her in her supplementary statement having been raped by accused Saurabh on 25.1.2009 in the evening opted to keep quiet, it is hard to believe that on the next day in the morning when Saurabh came to her again while she had gone to temple for prayers, she would meekly go along with him on his representation that her sister was sick and he wanted to consult her for giving a birthday gift to her sister. Such type of conduct is highly unnatural and difficult to accept. Then Akhand Partap suddenly appears

in the picture and served tea laced with some intoxicant to the prosecutrix resulting in her becoming unconscious; then she was placed in a car and taken to Etah. The whole story seems to be illogical and unacceptable to a reasoned mind. Why should both these persons Saurabh and Akhand Partap kidnap prosecutrix, a person related to them and well acquainted with them, that too, for the purpose of ransom risking their necks in the process i.e. being booked for serious offences carrying very stringent punishment of life imprisonment, as and when caught by the police. It is not the case of prosecution that Akhand Partap had raped the prosecutrix. The conduct of prosecutrix throughout has been very unnatural and unbelievable. If for a moment, it is taken that she was whisked away by Saurabh and his co-accused Akhand Partap and was being wrongly detained, some efforts must have been there on her part to free herself from the clutches of the accused and then to reach home but no such effort is shown to be there. If the prosecutrix had been a minor, illiterate girl coming from poor section of society, one could have understood her helplessness in the matter but not for a young educated girl from urban background behaving in such a manner. She could have brought the fact of her alleged kidnapping and rape to the persons living in the nearby areas to the houses where she was allegedly kept. She could have easily made efforts to contact the local police and to get the accused booked for their alleged crimes but that was not to be there. Again that smacks of her consent in the matter. Coming to the allegations regarding Saurabh having subjected her to rape, as already observed no hue and cry so as to attract the attention of the persons

living nearby is shown to have been made by the prosecutrix at any moment. No attempt to run away or to contact the local police in the matter is shown to have been there. Merely saying that she was threatened by the accused Saurabh that in case the matter was revealed, he would kill her, does not go to show that she was put under so much threat so as to make her keep silent. It is not case of the prosecution that accused Saurabh or any of the co-accused was armed with any dangerous weapon at any time or the same was flaunted before the prosecutrix or for that matter she was threatened therewith. Therefore, there was little occasion for any such fear coming in her mind so as to make her keep mum and not to show any protest. A perusal of cross-examination of PW9 Dr.Rajni Chauhan goes to show that the possibility of the prosecutrix being habitual to intercourse cannot be ruled out and that there was no reddish mark or any mark of resistance on the person of prosecutrix. She stated that she could not say whether the person examined had been consenting party or not. Thus it comes out that the prosecutrix had not offered any resistance of the sexual intercourse because if she had so done, marks of struggle would definitely have been there on her person. The doctor who had examined her had stated that possibility of prosecutrix being habitual to intercourse could not be ruled out. Further as stated by PW9 in her affidavit Ex.PJ which was made part of her examination-in-chief, vaginal swabs had been taken and sent for FSL. The prosecution has led other evidence as regards sending of such vaginal swabs to FSL but strangely enough no report from the FSL observing that semen was found in the swabs was placed

on file during prosecution evidence rather prosecution is silent as to whether any report from FSL was received with respect to the vaginal swabs and if received whether it was regarding presence or absence of the semen therein. Thus an adverse inference is to be drawn that the report was not favourable to the prosecution.

PW1 prosecutrix in her cross-examination stated that some of her belongings were left at the house of Saurabh i.e. her clothes; that she had filled a form and some certificates were left at the house of Saurabh herself. These replies rather point out that the prosecutrix had been going to house of Saurabh, which is in contrast to the replies given by her to the earlier questions wherein she stated that she did not go to the house of Saurabh and her sister used to come to them. If the prosecutrix had not been going to the house of Saurabh then how could her clothes and certificates appear in his (Saurabh) house. Thus it can be inferred that she had been visiting house of Saurabh may be in absence of her sister and that also point out that regarding some sort of physical relations between the prosecutrix and Saurabh earlier. During her cross-examination, she stated that her clothes were not torn but were removed; that she was not beaten; though she stated that after rape, she started bleeding but her clothes were not stained as the same had been removed. Thus no use of force in the matter comes out to be there. If two adults indulge in maintaining physical relations with consent that hardly constitute offence of rape. The very fact that clothes of prosecutrix had been removed goes to show that she had not offered resistance since her clothes if removed forcibly would have got torn at a place or two. If she

had started bleeding then the bed-sheet and the beddings would have got stained but then no such bed-sheet or beddings had been taken into possession by the Investigating Officer. During her cross-examination, she was confronted with her previous statements and she was found to be contradicting herself at many places which gives rise to a doubt in the mind about truthfulness of her version.

Adverting back to the offence of kidnapping for ransom in addition to what has been observed supra, it needs to be mentioned here that as per prosecution story, the ransom amount was to be paid by father and brother of the victim but then it has neither been alleged nor proved that accused Saurabh or Akhand Partap had made any call to the father or brother of the prosecutrix asking for payment of ransom to seek release of prosecutrix and in case of it being not so then she would be done to death. As far as telephonic call having been made by Saurabh to his wife Sonia on 26.1.2009 at about 3:30 p.m. at mobile No.97117 55881 from his mobile No.93108 65523 is concerned, as deposed by Sonia appearing as PW3 in which according to her Saurabh had asked her to tell her parents that he had taken the victim away and she was with him and they should arrange a sum of Rs.10 lacs else she would be killed and he could do anything with her. Admittedly, Sonia had not informed her father or brother herself and it was only when her father called her at 8:30 p.m. then she told him that she had received call from Saurabh at about 3:30 p.m. on her mobile and also about the money demanded by Saurabh and threat given by him. The whole thing seems to be very unrealistic. If Saurabh was to make a ransom call, he would

have spoken to father/brother of the prosecutrix and not to his own wife asking her to convey message to her father and brother. Secondly, if it had in fact been so done, the natural and immediate action of Sonia would have been to apprise her father and other family members on her parental side in that regard rather than keeping mum for about five hours and informing her father when he had informed her telephonically that the prosecutrix had not returned home from temple.

As regards prosecutrix deposing in that respect while appearing as PW1, she just referred to accused Saurabh and Akand Partap that they would get more money by kidnapping elder brother of prosecutrix namely Krishan Partap Singh and her nephew Nikhil. May it be so, but without these demands being conveyed to family members of the prosecutrix, the accused talking with each other in that regard, does not fulfill the necessary ingredients of offence under Section 364-A, rather offence of kidnapping is not established at all. One more thing to be noticed is that according to PW1 prosecutrix that when they had reached Firozabad, she was taken to a room where Manik came at 8:00 p.m. and asked them to accompany him for Agra and as they came out, the police, her father and younger brother Satender apprehended them and they were brought to Faridabad. In that way accused Saurabh, Akhand Partap and Manik had been apprehended along with prosecutrix on 30.1.2009 but according to the prosecution version they had been arrested much later, which goes to show that investigation in this case has not been carried out properly and in a fair and impartial manner.

As regards the disclosure statements said to have been made

by the accused during the course of their interrogation while being in police custody, PW10 SI Ram Kumar admitted in his cross-examination that in pursuance of disclosure statements of accused Saurabh, Manik Pandey and Akhand Partap, no recovery was effected. Therefore, these statements are not admissible in evidence and are hit by Section 25 of the Indian Evidence Act. These statements do not help the prosecution in advancing its case. One more thing to be noticed is that local police is not shown to have been joined while effecting recovery of the prosecutrix. As regards the call details got proved in evidence by the prosecution by examining PW7 Sanjeev Lakra that relate to the period 20.1.2009 to 25.1.2009 i.e. prior to the incident, as such are not of any value. Coming to the call details Ex.PF/1 relating to date 26.1.2009, those calls having been made between Saurabh and his wife Sonia could be routine conversation between the spouses and keeping in view the totality of circumstances it does not come out that any demand for any ransom amount was made through such calls.

As regards offence under Section 216 IPC against Amal @ Manke and Radha Devi of harbouring Akhand Partap and Saurabh knowing that they were escaping from custody of police since in view of detailed discussion above, the very foundation of the prosecution case is shaky and a big reasonable doubt arising in the mind about Akhand Partap and Saurabh having kidnapped the prosecutrix much less for the purpose of ransom and Saurabh committing rape upon the prosecutrix. Accused Amal @ Manke and Radha Devi can hardly be found to be guilty under those circumstances.

Therefore, we conclude that the impugned judgment of conviction and sentence passed by the trial Court suffers from several illegalities and infirmities as pointed out above and is a result of misappraisal of evidence and wrong interpretation of law. Such judgment cannot be sustained. The prosecution had failed to prove its charge against the accused beyond a shadow of reasonable doubt. Therefore, impugned judgment of conviction and order of sentence are liable to be set aside. As such all the three appeals are accepted, the impugned judgment of conviction and sentence is set aside and the appellants are acquitted of the charge framed against them.

5.4.2017	(T.P.S. MANN)	(H.S.MADAAN)
Brij	JUDGE	JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No